IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5404 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURENDRAN MANILAL SHAH

Versus

GENERAL MANAGER,

Appearance:
MR RAJESH DESAI FOR MR PRASHANT G DESAI for Petitioner
MR RM DESAI FOR M/S A & D for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/11/2000

ORAL JUDGEMENT

#. Heard Mr.Rajesh Desai, learned advocate for Mr.Prashant Desai appearing on behalf of the petitioner and Mr.R.M.Desai, learned advocate appearing on behalf of

the respondents.

#. The present petition wherein, rule has been issued by this Court on 23rd February, 1983. In the present petition, the petitioner has challenged the punishment order dated 15th October, 1981 wherein the disciplinary authority has imposed punishment upon the petitioner reducing by three stages in the time scale with effect from the date of the impugned order and also the order passed by the appellate authority dated 23rd November, 1982 - Annexure-D to the petition.

#. The brief facts of the present petition are as under :-

The petitioner was working as Manager at Palanpur Branch in the year 1970-71, when he had committed certain irregularities in the advances portfolio of the branch. The petitioner was issued articles of charge and statement of allegations under cover of memorandum dated 23rd January, 1979. The petitioner had sanctioned various agricultural loans to farmers for purchase of oil engines and for construction of wells and rooms in disregard of the Bank's standing instructions to carry out field / spot inspection before sanction of agricultural loans. The petitioner has submitted his written statement of defence dated 31st March, 1979 in which he denied all the charges levelled against him and thereafter, inquiry was followed and the inquiring authority in his report dated 25th August, 1981 held that all the charges against petitioner stand proved and thereafter the disciplinary authority accepted the findings of the inquiring authority and imposed punishment upon the petitioner a penalty of reduction of three stages in the time scale with effect from the date of order i.e. 15th October, 1981.

#. Mr.Rajesh Desai, learned advocate appearing on behalf of the petitioner has raised certain contentions in respect of the acquittal of identical charges in Criminal Case No. 15 of 1977 dated 11-10-1977 by learned Special Judge, City Civil and Sessions Court, Ahmedabad. The submission of learned advocate Mr.Desai is that when the petitioner has been acquitted in offence under Section 102-B read with Section 409 and 468 of the IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, then punishment imposed by the disciplinary authority is required to be set aside. The second contention which has been raised by Mr.Rajesh Desai is that the inquiry officer has not appreciated the evidence correctly and finding recorded by the inquiry

office is baseless and perverse. The third contention raised on behalf of the petitioner is that the reasonable opportunity has not been given to the petitioner by inquiry officer and the disciplinary authority has not considered the reply submitted by the petitioner. Therefore, according to the submissions made by Mr.Rajesh Desai, learned advocate for the petitioner, the punishment order which has been imposed by the disciplinary authority is required to be set aside and similarly the appellate authority has also not applied his mind while rejecting the appeal filed by the petitioner.

#. In the present petition, affidavit-in-reply has been filed by the respondents on 10th February, 1983 and along with the said reply which is on page 51 of the petition - Annexure-I, a letter of the petitioner has been annexed by the respondent. Thereafter, further affidavit-in-reply has also been filed by the respondent on 26th March, 1984 along with copy of the judgment delivered in Special Case No. 15/1977 dated 11th October, 1977 and in response thereof, the petitioner has also filed affidavit-in-rejoinder on 27th March, 1984.

#. Mr. Desai, learned advocate for the respondents has submitted that looking to the findings recording by the inquiry officer and allegations made against the petitioner, which have been found proved by the inquiry officer, punishment imposed by the disciplinary authority cannot be considered to be unreasonable or which shocks the conscience of the Court. Mr.Desai has submitted that the inquiry officer has considered in detailed all the evidence and come to the correct conclusion which is absolutely based upon the legal evidence and each and every aspect in respect to every allegation levelled against the petitioner has been duly discussed to the satisfaction of the inquiry officer. Therefore, it cannot be believed that the findings of the inquiry officer is baseless and perverse. Mr.Desai has also submitted that Mr.Rajesh Desai, learned advocate for the petitioner has not been able to point out that how the finding of the inquiry officer is baseless and perverse. Mr.Desai also submitted that the petitioner has placed reliance on the acquittal given by the Criminal Court to the petitioner but pointing out observations of the learned Special Judge from the very judgment recording acquittal of the petitioner, the punishment imposed by the respondent upon the petitioner itself justify the quantum of punishment. Mr.Desai has submitted that the following the observations have been made the learned Special Judge in Criminal Case No. 15/77 dated 11th

October, 1977, which is reproduced as under :-

"It is no doubt true that accused No.1 Shri S.M.Shah had committed a grave irregularity and it is mainly due to his fault and negligence that the Bank had suffered heavy loss, but it is for the Bank authorities to deal with the matter and take action against the accused No.1 who was largely responsible for the payment made to accused No.2 without making necessary enquiry but it would not be safe to base conviction for a criminal charge like the present, one, on the ground that accused No.1 need not proceed to made `On the spot', inquiry and sanctioned the loans and made payment thereof. It can be said that there is a case of suspicion against accused No.1 that perhaps, helps accused No.2 in securing amount in question, in exchange of pecuniary advantage, as he acted hurriedly and gave facility to accused No.2 in obtaining the amounts in question from the Bank. But is a mere suspicion which can not take place of proof,and the case against accused No.1 is, therefore, not proved beyond doubt."

#. In view of above observations made by the learned Special Judge, according to Mr.Desai for the respondents, the charge levelled against the petitioner in respect of the irregularities stand proved and it was a clear finding in Criminal Case that the petitioner had committed grave irregularities and it is mainly due to his fault and negligence that the bank had suffered heavy loss. Therefore, according to Mr.Desai in light of the observations made by the Sessions Court and finding given by the inquiry officer, the punishment imposed upon the petitioner by the respondent bank is quite just, reasonable and proportionate to the proved misconduct in question. He also submitted that this Court while exercising the powers under Article 226 of the Constitution cannot reappreciate the finding given by the inquiry officer and can come its own conclusion and similarly while exercising the power of judicial review, this Court cannot sit as an appellate authority when in regular departmental inquiry, charges are proved and then this Court cannot interfere with the punishment because the power of imposing the punishment is with the respondent bank and therefore, this Court has no jurisdiction to interfere with the just and reasonable punishment imposed by the respondent bank.

#. I have considered submissions of both the learned

advocate appearing for the parties. Considering the facts and circumstances of the present case, the charges which are levelled against the petitioner by the respondent banks require to be considered which runs as under :-

"During the period when Mr.S.M.Shah was functioning as the Branch Manager of the Bank of Baroda, Palanpur Branch during the year 1970-71, he is reported to have committed gross misconduct and is, therefore, charged as follow :

1. that he failed and/or neglected to take all possible steps to ensure and protect the interests of the Bank, which amounts to misconduct in terms of sub regulation 3(1) read with regulation 24 of the Bank of Baroda Officer Employees' [Conduct] Regulations 1976, hereinafter referred to for brevity's sake as `the Conduct Regulations'.

2. that he failed and/ or neglected to discharge his duties with utmost integrity, honesty, devotion and diligence, which amount to misconduct in terms of sub regulation 3(1) read with regulation 24 of the Conduct Regulations.

3. that he acted in a manner which was unbecoming of a Bank Officer, which amounts to misconduct in terms of sub regulation 3(1) read with regulation 24 of the Conduct Regulation 24 of the Conduct Regulations."

#. Looking to the charges and allegations levelled against the petitioner on page 18, a detailed statement of allegations has been produced on record by the petitioner wherein, the amount of loan has been granted by the petitioner in favour of the lonee without spot inspection before sanctioning the agricultural loan. This aspect has been in detailed considered by the inquiry officer and I have also perused the findings given by the inquiry officer. The inquiry officer has discussed each and every charge and relevant evidence which were recorded in his presence and also considered the defence statement of the petitioner and ultimately, the inquiry officer has come to the conclusion that after careful consideration of all the evidence and witnesses as well as various exhibits and arguments submitted on behalf of the parties, the inquiry officer has come to the conclusion that in most of the cases, the petitioner has already disbursed the loan amount to the oil engine

dealer who has not supplied the oil engine to the borrowers. The petitioner has also submitted before the inquiry officer in his submission that this fact he came to know on 20th May, 1971. The inquiry officer has also come to the conclusion that no inspection was carried out by the petitioner and therefore, according to the inquiry officer, charges levelled against the petitioner was found to be proved by finding recorded on 25th August, 1981. I have also perused the entire finding given by the inquiry officer and have also perused the order passed by the appellate authority and also observation made by the learned Special Judge in Special Case No. 15 of 1977 dated 11th October, 1977 wherein, in terms the Court has observed that it is no doubt that the accused No.1 Shri S.M.Shah had committed a grave irregularity and it is mainly due to his fault and negligence that the bank had suffered heavy loss, but it is for the Bank authorities to deal with the matter and take action against the accused No.1 who was largely responsible for the payment made to accused No.2 without making necessary enquiry. Therefore, in light of these observations made by the learned Special Judge while recording acquittal in criminal case will not helpful to the petitioner because it was only on the basis, benefit of doubt given and observations made by the Sessions Court has also proved the charges against the petitioner. Therefore, considering all these aspects of the matter, according to my opinion, finding recorded by the inquiry officer, seems to be absolutely based upon legal and valid evidence and the same cannot be considered to be baseless and perverse and the charges levelled against the petitioner is found to have been proved. Moreover, as such there is no denial of principles of natural justice to the petitioner inasmuch as inspection of all the relevant records was given by the respondent bank to the petitioner. Mr.Rajesh Desai, learned advocate has not been able to satisfy that the principles of natural justice has been violated by the respondent bank while conducting the departmental inquiry against the petitioner. In view of this fact, when the charges levelled against the petitioner is found to have been proved on the basis of record and finding recorded by the the inquiry officer and considering the limited jurisdiction of this Court to interfere with the punishment imposed upon the petitioner by the respondent bank. The Apex Court in case of U.P.ROAD TRANSPORT CORPORATION VS. A.K. PARUL reported in 1998 (9) Supreme Court Cases page 416 has observed that this Court has consistently taken a view that while exercising judicial review, the Court shall not normally interfere with the punishment imposed by the authority and this will be more

so when the Court finds the charges were proved. In case of STATE BANK OF INDIA VS. SAMARENDRA KISHOR ENDOW reported in 1994 (2) Supreme Court Cases Pg 537, the Apex Court held that imposition of proper punishment is within discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reasons that the jurisdiction of the Tribunal is similar to the powers of High Court under Article 226 of the Constitution. As noticed earlier, the High Court having found the charges proved, is not justified in interfering with the punishment imposed by the disciplinary authority. Considering the observations made by the Apex Court in above referred two cases, according to my opinion, when the charges are found to have been proved in the case on hand and looking to the observations made by the learned Special Judge in Special Case No. 15 of 1977 against the petitioner and punishment which has been imposed upon the petition by the respondent bank, no interference of this Court is required, to meet the ends of justice. Looking to the gravity of the misconduct and punishment imposed by the respondent bank, according to my opinion, the respondent bank has taken very reasonable view for imposing punishment upon the petitioner and such punishment cannot be considered to be harsh or disproportionate which shocks conscience of the Court. Therefore, according to my opinion, punishment imposed upon the petitioner by the respondent bank is reasonable and especially looking to the gravity of misconduct, is just, proper and proportionate to the gravity of misconduct proved against the petitioner and therefore, does not warrant any interference of this Court while exercising the powers of judicial review under Article 226 of the Constitution. In the result, the present petition is dismissed. Rule stands discharged with no order as to costs. Ad-interim relief if any, stands vacated.

Date : 10-11-2000 [H.K.RATHOD, J.]

#kailash#